

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653 (KRH)
. .
. Chapter 11
. Jointly Administered
CIRCUIT CITY STORES, .
INC., et al., . 701 East Broad Street
. Richmond, VA 23219
. .
Debtors. .
. August 22, 2011
. 2:11 p.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Tavenner and Beran, PLC
By: PAULA S. BERAN, ESQ.
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

Pachulski Stang Ziehl & Jones LLP
By: ANDREW W. CAINE, ESQ.
780 Third Avenue, 36th Floor
New York, NY 10017

For Leggett & Platt: By: MEG HART, ESQ.

For Alameda County: Vandeventer Black LLP
By: JERRELL E. WILLIAMS, ESQ.
707 East Main Street, Suite 1700
Richmond, VA 23218

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268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

1 COURTROOM DEPUTY: All rise. The court is now in
2 session. Please be seated and come to order.

3 COURT CLERK: In the matter of Circuit City Stores,
4 Incorporated, hearing on Items 1 through 44 as set out on
5 proposed agenda.

6 MS. BERAN: Good afternoon, Your Honor.

7 THE COURT: Good afternoon, Ms. Beran.

8 MS. BERAN: For the record, Paula Beran of the law
9 firm of Tavenner and Beran. With me this afternoon at
10 counsel's table in person this time is Mr. Andrew Caine with
11 the Pachulski law firm. In addition --

12 THE COURT: He was here in person last time, too.

13 MS. BERAN: Two times in a row, Your Honor. Also at
14 counsel's table this afternoon is Mr. Jeffrey McDonald. He is
15 the trust's representative here this afternoon.

16 THE COURT: All right. And I recall Mr. McDonald, as
17 well.

18 MS. BERAN: Your Honor, there are a number of matters
19 on this afternoon's docket. And Your Honor may recall that in
20 discussions in the colloquy with my law partner, Ms. Tavenner,
21 that there were a number of substantive evidentiary matters
22 that were being scheduled for today. Your Honor, the good news
23 is that most of those matters have been resolved and most are
24 going forward today on a consensual basis.

25 In connection with that, Your Honor, if I may just go

1 through the docket as submitted on the agenda --

2 THE COURT: You may.

3 MS. BERAN: -- and address them. There is one matter
4 that Mr. Caine will be handling and at that point in time, I'll
5 turn it over to him and then pick back up. Thank you, Your
6 Honor.

7 The first item on today's agenda is a pretrial in the
8 matter of Siegel versus Leggett & Platt. In connection with
9 that matter, Your Honor, pursuant to the procedures
10 established, we are prepared to set that matter for trial. I
11 have discussed the matter with Ms. Hart (phonetic), as well as
12 other counsel have discussed it with Mr. Reynolds. And we
13 believe that that matter should be set for a day and a half
14 trial. In connection with that, we did speak with the Court
15 scheduling clerk before this hearing and understand that March
16 the 12th and 13th are available from the Court's schedule
17 perspective and that was available from the trust's
18 perspective, as well as the defendant's perspective, if Your
19 Honor is so inclined to set the trial on those two days.

20 THE COURT: All right. Very good. You wish -- not
21 sure --

22 MS. HART: Good afternoon. Meg Hart for Leggett &
23 Platt. I agree with counsel's summary completely. We're
24 asking for March 12th --

25 THE COURT: Okay. Very good. All right. So, we'll

1 set this down then for trial on the 12th of March and I'll
2 reserve the 13th, as well, so that we'll have those days set
3 aside. And I'll enter my normal pretrial order then in
4 connection with that, as well, that will set forth the
5 scheduling as far as discovery and other matters are concerned.

6 MS. BERAN: Thank you, Your Honor.

7 MS. HART: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 MS. BERAN: Your Honor, the next category of matters
10 are continued and/or withdrawn, matters in connection with
11 those, the first being a couple of motions and matters in the
12 Siegel versus Merrimack Valley Corp. In connection with that,
13 Your Honor, you may recall that that matter had been -- the
14 underlying adversary had been resolved and settled subject to
15 documentation and consummation. The documentation has not yet
16 been finalized. We don't believe there's any issue with it.
17 We just understand it's a matter of schedules due to the summer
18 months. And, accordingly, we'd respectfully request that these
19 matters be continued over until the September 7th omni for the
20 documentation to be finalized.

21 THE COURT: All right. It'll be continued to the
22 7th.

23 MS. BERAN: Thank you, Your Honor. Similarly, Your
24 Honor, Item Number 3, Site A, LLC's second amended motion to
25 allow late filing proof of claim or, in the alternative motion,

1 to file late proof of claim as an amendment to informal proof
2 of claim. That matter as represented previously to Your Honor
3 has been settled subject to documentation. We'd respectfully
4 request until -- a continuance of this matter until the
5 September 7th omni.

6 THE COURT: It'll be continued to the 7th.

7 MS. BERAN: Your Honor, Item Number -- thank you.
8 Item Number 4 is a motion to determine -- or a motion to excuse
9 compliance with mandatory mediation provisions of procedures
10 order. In connection with that, Your Honor, the trust is
11 working with that entity in connection with the scheduling of
12 mediation. And based on that pursuant to an e-mail dated
13 August 9, that entity agreed to withdrawn this matter or this
14 motion and the parties will continue to work towards finalizing
15 the mediation schedule and trying to resolve before having to
16 mediate -- I mean, before having to actually come before Your
17 Honor from a litigation --

18 THE COURT: Okay. So, it's going to go to mediation
19 rather than require to hear whether they should be excused from
20 that procedure.

21 MS. BERAN: Correct, Your Honor. The first aspect of
22 the matter was on a timing perspective. And we are working
23 with them from a timing perspective and trying to settle.
24 After that, Your Honor, I think the parties reserve their
25 rights as to whether this matter should be heard from a

1 mediation standpoint.

2 THE COURT: Okay. Very good.

3 MS. BERAN: Thank you, Your Honor. Your Honor, the
4 next matter, Item Number 5, motion to approval liquidating
5 trust's motion for an order pursuant to Bankruptcy Code
6 Sections 105 and 363 approving sale of certain patents and
7 other intellectual property and related assets as being free
8 and clear of all liens, claims and interests. That matter is
9 one that is going to be handled by Mr. Caine.

10 THE COURT: All right. Thank you. Mr. Caine?

11 MR. CAINE: Thank you, Your Honor.

12 THE COURT: Mm-mm.

13 MR. CAINE: This is one of the particularly pleasant
14 stories we have of the liquidation. The assets that are before
15 Your Honor with respect to this motion are some patent assets
16 related to a technology that, as a non-technology person I can
17 only describe in those very lay terms, which gave the ability
18 through particular types of video players to track the use of
19 DVDs and allow them to be rented and turned on, turned off
20 again, tracked, et cetera. That's the best I can do.

21 Anyway, at any rate --

22 THE COURT: That's probably as good as I'm going to
23 get, too, so --

24 (Laughter)

25 MR. CAINE: As you will see in a moment, I will

1 proffer Mr. McDonald's testimony. If you wish to hear more
2 detail, he can explain it in more technical terms.

3 At any rate, the patent rights with respect to this
4 technology were held by a nondebtor limited partnership, a
5 general partner which was Sky Venture Corporation, a debtor in
6 this case. And there were two limited partners, Circuit City
7 Stores, also a debtor, and then an unrelated entity which I'll
8 explain briefly.

9 Throughout the course of the Chapter 11 case,
10 apparently there wasn't much belief that these patent rights
11 had any value. In fact, the partnership had been very
12 unsuccessful through the many years that preceded the petition
13 date. As the trust went through all of the potential assets
14 that remained after the trust became in control approximately a
15 year ago, we discovered these patent assets. The trust
16 retained Streambank who Your Honor may recall was retained by
17 the debtors to market the name and the website and other
18 intellectual property assets. And through Streambank's
19 efforts, the patents have recovered, assuming the sale is
20 approved and closes, \$6 million.

21 Now, the particularly fun part of the story, if you
22 will, Your Honor, is that when we filed the motion, we attached
23 an asset purchase agreement of a stalking horse bidder for
24 \$750,000. So, the auction that Streambank conducted just last
25 week resulting in the final bid of \$6,025,000 was a nice

1 surprise for the estate.

2 So, we're here before Your Honor to seek approval of
3 that sale. And it is kind of an unusual motion in a way
4 because as we explained to both the stalking horse and the
5 potential bidders along the way, we believe that the plan and
6 confirmation order vests these assets in the trust to sell free
7 and clear. But, the buyers said we're spending a lot of money
8 and if you don't mind let's put this out on notice, the motion
9 before the Court, and just confirm through an order so that if
10 there's ever any question, I also have an order of the
11 Bankruptcy Court, in addition to the confirmation order to
12 demonstrate that I have received these, free and clear.

13 THE COURT: And I'm used to that. That happens all
14 the time.

15 MR. CAINE: All right. Thank you, Your Honor. I
16 appreciate that.

17 So, we're before you, Your Honor, really on two
18 pieces because the initial motion asked Your Honor what I just
19 described. The trust holds these assets free and clear
20 pursuant to the plan and confirmation order. Just please
21 confirm that we are selling these free and clear. And, in
22 fact, Your Honor, we do not know of any potential liens or
23 encumbrances against these assets. All the pre-petition
24 lenders were paid in full, et cetera, et cetera.

25 The second part involves the amended motion that we

1 filed because as we were going through the process of moving
2 toward the auction, we discovered through going through all the
3 details that it was in fact a nondebtor limited partnership
4 that held title to these assets. For all intents and purposes,
5 the debtors controlled this limited partnership.

6 SVC, Sky Venture, was the general partner with the
7 right to transfer all of its assets, dissolve it and conduct
8 whatever business the partnership would require. The limited
9 partners were Circuit City to the vast majority of the holdings
10 and a small entity that had a change of names along the way,
11 Zoom Holdings, Zoom TV, that were owned and controlled solely
12 by partners in a Los Angeles law firm named Ziffren Brittenham.

13 As Mr. McDonald would testify, and I will proffer his
14 testimony in this way, the partnership was run entirely by
15 Circuit City. It invested the funds that were necessary to try
16 and keep it alive. Somewhere close to \$300 million were placed
17 into the partnership by Circuit City. It was the sole general
18 partner. It basically conducted the business of this
19 partnership. At this point in time, it becomes clear that the
20 trust, through the plan and confirmation order, acceded to all
21 right and claim to dispose of these assets as the general
22 partner, which was the debtor, would have prior to the petition
23 date.

24 And so, we believe that it indicates in the amended
25 motion itself and goes through at length that there's no

1 question in our minds that the trustee as a successor to Sky
2 Venture, the general partner, has the right to transfer these
3 assets, dissolve the partnership, liquidate the partnership and
4 distribute the proceeds.

5 The amended motion was designed to put this out on
6 notice to everyone we could think of who might have an interest
7 in objecting because we could, Your Honor, have simply had the
8 trustee transfer these patent assets but we didn't think that
9 was the prudent or the cautious way to go about this. So, we
10 noticed every potential bidder. We noticed all the general
11 lists. We noticed the Ziffren firm and all the Zoom entities.
12 And, as you can see, Your Honor, there were no objections.

13 In fact, I communicated personally with Ken Ziffren
14 who indicated to me that they do consent to the relief that we
15 are seeking, for after all, we're not seeking to distribute the
16 net proceeds of the sale through this motion. We're simply
17 asking the Court to confirm the sale so that we can close and
18 then put the net proceeds in a segregated account. And if
19 there ever becomes any dispute between the trust and the
20 Ziffren firm or anyone else, then we could come back to Your
21 Honor. But, all potential claimants are protected by the fact
22 that the proceeds are placed in a segregated account.

23 Mr. McDonald would also testify, Your Honor, that
24 there are no known creditors of this limited partnership other
25 than Circuit City and the Delaware Secretary of State who's

1 owed approximately \$1500 and some fees that accrued
2 post-petition that were not paid, and that there are no other
3 creditors out there.

4 So, we believe that we have made a diligent effort to
5 determine any party that might have any potential interest and
6 we have noticed them and indicated that we want to close the
7 sale and then put the net proceeds in a segregated account.
8 And if they have any claims, they can come to us. And, again,
9 as you can see, there was no objection.

10 So, Your Honor, we are prepared if Your Honor is so
11 inclined to -- I can put Mr. McDonald on the stand. He can
12 testify to all that I've just described to you and what's in
13 the motion. I also have Mr. Jack Hazan in here from Streambank
14 who can testify about what happened at the auction that
15 resulted in the winning bid of \$6,025,000. And to the extent
16 Your Honor would have any further interests, we also have
17 counsel for the winning bidder here. They're more here just as
18 a matter of interest, but all of that we can provide into
19 evidence including copies of the limited partnership
20 agreements, et cetera.

21 Since we have a different buyer than the original
22 motion, we have a slightly realized sale order. It would
23 attach -- we haven't submitted to Your Honor -- it attaches a
24 different asset purchase agreement that we finished negotiating
25 on Friday and makes only slight changes. We have black lines

1 available now or later if Your Honor wishes along with the new
2 sale order.

3 With all that being said, Your Honor, unless you
4 would like us to put on live testimony, we would ask that Your
5 Honor approve both the initial motion and the amended motion,
6 allowing the trust to sell these patent assets free and clear
7 and recognizing that the trust intends to have the trustee as a
8 successor of Sky Venture transfer these patent rights to the
9 trust in order to dispose pursuant to the sale.

10 THE COURT: All right. Does any party wish to cross
11 examine the proffered witnesses?

12 (No audible response)

13 THE COURT: All right. The proffers then will be
14 accepted. You do not need to put on the actual testimony.

15 With regard to the sale itself, is there -- do you
16 anticipate there is going to be some sort of a dispute between
17 the debtor entities and the nondebtor Zoom holdings with regard
18 to how the ultimate proceeds are to be distributed between the
19 entities or among the entities?

20 MR. CAINE: I do not expect there will be a dispute,
21 Your Honor.

22 THE COURT: All right. And what proportion of the
23 assets would be coming to the estate?

24 MR. CAINE: Well, it's the trust's position that 100
25 percent of the net proceeds should come to the estate.

1 THE COURT: Because Circuit City was the creditor and
2 the creditor should get paid first.

3 MR. CAINE: Exactly.

4 THE COURT: All right. Very good. All right. Now,
5 is there any party that wishes to be heard in connection with
6 the motion to approve the liquidating trust's motion to sell
7 these assets?

8 (No audible response)

9 THE COURT: All right. The Court will approve the
10 motion then, Mr. Caine. And I'll look forward to that order
11 being submitted. If you would be so kind as to submit a black
12 line version of the asset purchase agreement just so I can see
13 what the changes were, but the Court will approve and enter the
14 order.

15 MR. CAINE: Absolutely, Your Honor. We'll do that
16 this afternoon.

17 THE COURT: Thank you.

18 MR. CAINE: Thank you.

19 MS. BERAN: Your Honor, that brings us to the lengthy
20 part of the agenda today and that's the claims objections.

21 THE COURT: All right. Before we get to that, the
22 parties to the last motion, if they want to be excused at this
23 point.

24 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

25 THE COURT: All right.

1 MS. BERAN: Your Honor, Item Number 6 is the debtors'
2 nineteenth omnibus objections to claims. In connection with
3 that, there is still one claim pending and we'd respectfully
4 request that the status hearing be adjourned to the September
5 7th omni.

6 On these, Your Honor, there is a method here, as
7 well, to our madness. In connection with the older debtors'
8 omnibus objections, we are asking that they be continued until
9 the next omni. And, unfortunately, it's only a couple weeks
10 but, as Your Honor may recall, we're trying to do status the
11 first, and substantive or evidentiary on the second omni. And
12 given that there was only one omni in August, we are continuing
13 some of these just for a couple weeks. But, we'd like to keep
14 them on the same track.

15 THE COURT: I was trying to explain how all that
16 works to my new law clerk earlier today and explaining all of
17 the exceptions to the rules got to be more cumbersome than the
18 rule itself. But, nevertheless, we will certainly continue
19 these -- this matter to the 7th of September.

20 MS. BERAN: Thank you, Your Honor. Your Honor, on
21 Item Number 7 is the debtors' thirty-first omnibus objection.
22 I'm pleased to report that the matter as it relates to the
23 Richard and Deborah Jaynes which was set for an evidentiary
24 hearing today, Your Honor, has been resolved pursuant to
25 procedures previously approved by this Court and the matter may

1 be withdrawn from the Court's docket.

2 THE COURT: All right. It'll be withdrawn.

3 MS. BERAN: For the remaining handful of claims still
4 subject to that omnibus objection, Your Honor, we'd
5 respectfully request that they be continued for status purposes
6 till September 7th.

7 THE COURT: All right.

8 MS. BERAN: Your Honor, on the debtors'
9 thirty-seventh omnibus objection to claims, Your Honor may
10 recall pursuant to an update that Ms. Tavenner provided at the
11 last omnibus hearing date, that that matter was scheduled,
12 specifically the motion for partial summary judgment, and well
13 as to the extent Your Honor granted the same, it was scheduled
14 for an evidentiary hearing today.

15 I am happy to report to Your Honor as I indicated and
16 I'd like to put it on the record when I do this is, I indicated
17 the same to Your Honor's chambers earlier this morning because
18 I was not sure if Your Honor would need additional time to
19 prepare for that matter, so I wanted to alert. But, I do like
20 to note that for the record.

21 In connection with that, Your Honor, that matter has
22 been resolved as it relates to all but three of the tax
23 entities. In connection with two of the three, there is a
24 proposed settlement that will be recommended to the requisite
25 board, whether that be a board of supervisors, city -- county

1 council, city council. But, the matter, whether it's settled
2 or not, just needs to go to the appropriate requisite municipal
3 entity for approval.

4 And in connection with the one remaining claimant,
5 and it's actually a couple of the California entities, but as
6 it relates to they're all represented by one entity -- one
7 party. And we are in discussions with that one remaining. And
8 we're optimistic but we'd respectfully request that the motion
9 for summary judgment, as well as the substantive evidentiary
10 hearing to the extent Your Honor were to rule in the trust's
11 favor in connection with the motion for summary judgment, be
12 continued for 30 days to the September 21st omnibus date.

13 THE COURT: September 21st.

14 MS. BERAN: Yes, Your Honor.

15 THE COURT: All right. And now, which are the three
16 that still -- because we had City of Brighton and Alameda
17 County, Monterey County, Placer County and Los Angeles County.

18 MS. BERAN: Your Honor, the first two are the ones
19 that the -- a settlement is being recommended to the requisite
20 city --

21 THE COURT: Right.

22 MS. BERAN: -- the county, municipal authority. And
23 then, the others are the ones in connection with -- the other
24 three are the ones that are represented by the same counsel.

25 THE COURT: All right.

1 MS. BERAN: And we've agreed with her that these
2 matters would be continued for 30 days to the September 19th
3 omnibus.

4 THE COURT: All right. You wish to be heard?

5 MR. WILLIAMS: Certainly. Jerrell Williams. I may
6 have missed out on a communication between offices.

7 THE COURT: Come on up to the podium.

8 MR. WILLIAMS: Jerrell Williams representing Alameda
9 County.

10 THE COURT: Yes.

11 MR. WILLIAMS: And as I said, I may have just not
12 gotten a communication and --

13 THE COURT: You thought we were going forward today
14 on this?

15 MR. WILLIAMS: Yes, Your Honor.

16 THE COURT: Okay. And --

17 MR. WILLIAMS: Did you talk with Ann?

18 MS. BERAN: Your Honor, I apologize. And I
19 apologize. I had forwarded a communication to Mr. Lake who is
20 no longer with this law firm and I was in the process of
21 calling another person at the Vandavener Law Firm. And Mr.
22 Caine heard from your co-counsel that the matter would be
23 recommended. And so, then I never left a message for Ann and I
24 apologize.

25 MR. WILLIAMS: Yes. And glad to completely agree

1 with whatever Ann told you. I just didn't know.

2 (Laughter)

3 THE COURT: Okay. So, for your purposes then, I
4 mean, what we're going to do is we're going to continue this to
5 the 21st of -- is it the 19th or the 21st? Well, we're going
6 to continue it to some day.

7 (Laughter)

8 THE COURT: And --

9 MS. BERAN: September 21st, Your Honor.

10 THE COURT: Okay. So, September 21st. And
11 theoretically, it's going to be recommended for approval and
12 then everybody's going to live happily ever after. If for some
13 reason, everything breaks down and that doesn't happen, then
14 we'll come back on the 21st and hear it then. Okay?

15 MR. WILLIAMS: Thank you, Your Honor.

16 THE COURT: All right. Thank you very much.

17 MR. WILLIAMS: I apologize for the confusion.

18 THE COURT: All right.

19 MS. BERAN: Your Honor, as it relates to Item Number
20 9, the debtors' sixtieth omnibus objection. For the one claim
21 which still remains pending as it relates to that omni, we'd
22 respectfully request the matter be continued for status to the
23 September 7th omni.

24 THE COURT: It'll be continued.

25 MS. BERAN: Similarly, Your Honor, on the debtors'

1 seventieth omnibus objection, one claim remains pending. We
2 respectfully request that that be continued until the September
3 7th omni.

4 THE COURT: All right.

5 MS. BERAN: On Item Number 11, a similar situation,
6 the debtors' seventy-sixth omnibus objection. There was one
7 claim for which the objection remains pending. We'd
8 respectfully request that that matter be adjourned to September
9 7th omni.

10 THE COURT: It'll be continued.

11 MS. BERAN: The debtors' seventy-ninth omnibus
12 objection, there are a couple of matters that remain on that
13 omnibus objection. We'd respectfully request that the matter
14 be continued until the September 7th omnibus objection.

15 THE COURT: It'll be continued.

16 MS. BERAN: Your Honor, now we start the section of
17 the agenda that deals with the liquidating trust omnibus --
18 liquidating trust objection to claims. And the first are the
19 stand-alone tax claims. Item Number 13 is the omnibus
20 objection to the Arizona Department of Revenue claims. We'd
21 respectfully request that the status hearing be continued until
22 the October 19th omnibus date.

23 THE COURT: It'll be continued to October 19.

24 MS. BERAN: Thank you, Your Honor. Item Number 14 is
25 a similar stand-alone objection as it relates to the City of

1 New York Department of Finance. In connection with that, Your
2 Honor, we'd respectfully request that the status hearing be
3 adjourned to the October 19th hearing.

4 THE COURT: Okay. It'll be adjourned till October
5 19.

6 MS. BERAN: Item Number -- thank you, Your Honor.
7 Item Number 15 is the stand-alone as it relates to the
8 Tennessee Department of Revenue. And we'd respectfully request
9 that it be continued -- the status conference be continued till
10 the October 19th omni.

11 THE COURT: And that'll be continued to October 19.

12 MS. BERAN: Thank you, Your Honor. Item Number 16 is
13 the stand-alone tax objection as it relates to the Wisconsin
14 Department of Revenue. We'd respectfully request that that be
15 continued until the October 19th omnibus hearing date.

16 THE COURT: And that'll be continued to October 19,
17 as well.

18 MS. BERAN: Item -- thank you, Your Honor. Item
19 Number 17 is the omnibus objection as it relates to the claim
20 of Louisiana Department of Revenue. We respectfully request
21 that it be continued -- the status hearing be continued until
22 the October 19th omni.

23 THE COURT: And that'll be continued to October 19.

24 MS. BERAN: Thank you, Your Honor. Item Number 18 is
25 the stand-alone tax objection to the claim of the Commonwealth

1 of Massachusetts. We'd respectfully request that that matter
2 be continued until the October 19th omnibus hearing for status
3 only.

4 THE COURT: And that'll be continued to October 19.

5 MS. BERAN: Thank you, Your Honor. The next two
6 items, Number 19 and Number 20, they are stand-alone tax
7 objections as it relates to the State of New Jersey, as well as
8 the Commonwealth of Virginia or the Virginia Department of
9 Taxation. We'd respectfully request that both of those be
10 adjourned until the October 19th omnibus for status hearing
11 only.

12 THE COURT: All right. Those will be continued, as
13 well, to October 19.

14 Now, let me ask a question. Are you anticipating the
15 same kinds of objections that you got from the state -- or the
16 city, rather, taxing authorities that we had in the eighth --
17 matter Number 8 on the calendar, the issue about the new
18 language in Section 505, or is this not the same kind of tax
19 claims or something?

20 MS. BERAN: Your Honor, in some instances, they are
21 the same types, in others, they are not. If you would -- if I
22 may beg the Court's indulgence, I am not the attorney that is
23 handling these negotiations but actually Mr. McDonald is
24 intimately involved in connection with all those, and if Your
25 Honor would be so inclined, I could ask Mr. McDonald --

1 THE COURT: I was just wondering if I could just
2 throw all that away or if I have to continue to remember it all
3 --

4 (Laughter)

5 THE COURT: -- because I've looked at the issue and
6 obviously anticipating for today, and so I was just curious.
7 It's not critical.

8 MS. BERAN: Okay. Your Honor, that turns us then to
9 the liquidating trust's omnibus objections.

10 THE COURT: Okay.

11 MS. BERAN: In connection with the liquidating
12 trust's first omnibus objection, I -- in connection with the
13 agenda, Your Honor, I see the trust has resolved the objection
14 as it relates to certain claims. As it relates to that one, I
15 misspoke on that. There actually aren't any that have been
16 resolved since the last omnibus hearing on that one objection.
17 There were some on there but it had already been listed on the
18 last agenda.

19 So, if you actually looked at Exhibit B, Your Honor
20 would not see any -- those that you would see on Exhibit B are
21 those in which we have continued to have discussions, who have
22 either filed a response and/or we've agreed that no response
23 was necessary and we've continued out the response date. For
24 all of those listed on Exhibit B, we'd respectfully request
25 that we continue for status purposes until the October 19th

1 omni.

2 THE COURT: All right. Very good. They'll be
3 continued to the 19th.

4 MS. BERAN: Thank you, Your Honor. Item Number 22 is
5 the liquidating trust's second omnibus objection. In
6 connection with those, there are several or there are some --
7 I'm not sure exactly how many at this point standing before
8 Your Honor, but there are some that have been resolved and they
9 are so indicated on Exhibit B in the status column. And we'll
10 be tendering an order as it relates to those resolutions.

11 And then, similarly, Your Honor, there are the
12 categories of the people who have responded and/or who haven't
13 responded but we've agreed to continue the response deadline,
14 as well as the status hearing until the October 19. So, we'd
15 respectfully request that the Court enter an order doing the
16 same.

17 THE COURT: All right. Those will be continued then
18 to the 19th.

19 MS. BERAN: Thank you, Your Honor. Similarly, Your
20 Honor, on the liquidating trust's third omnibus objection, and
21 the trust has resolved certain of those claims as it relates to
22 the specific objection. And that is so identified on Exhibit B
23 that was attached to the agenda.

24 Similarly on Exhibit B, there are those that -- where
25 responses have been filed and/or where we're in discussions

1 with the parties or claimants and we've agreed to continue the
2 status out until the October 19th omnibus date.

3 THE COURT: All right. Those will be continued to
4 the 19th.

5 MS. BERAN: Your Honor, there is one thing I'd like
6 to put on the record for all of these omnibus claims as it
7 relates to Exhibit B attached to the agenda. To the extent a
8 response has already been filed where we indicate on there that
9 the response deadline is now October 12th, it's the trust's
10 position that if a response has already been filed, it's been
11 filed. And I apologize to the extent we haven't picked it up
12 on the response column.

13 THE COURT: All right. Very good.

14 MS. BERAN: I did that statement for Ms. McLemore who
15 does have some clients who have filed a response and we might
16 not have picked them up yet on Exhibit B.

17 THE COURT: All right. I had assumed that that was
18 what we were doing but I'm grateful for the clarification.

19 MS. BERAN: Thank you, Your Honor. Your Honor, I
20 believe that -- it jumped on me, I believe that brings us to
21 the liquidating trust's fourth omnibus objection.

22 THE COURT: That's where I am, too.

23 MS. BERAN: And in connection with that, Your Honor,
24 the trust has indicated on Exhibit B, has resolved certain of
25 those. And then, there's the two categories of responses filed

1 or we're in discussions and agreed to continue out the response
2 deadline. We'd respectfully request that this matter be
3 adjourned to the October 19th for status purposes only.

4 THE COURT: And it'll be continued to the 19th.

5 MS. BERAN: Thank you, Your Honor. Similarly, Your
6 Honor, Item Number 25 is the liquidating trust's fifth omnibus
7 objection. And as indicated on Exhibit B, some of those have
8 been resolved as described on Exhibit B. And then, there's the
9 two categories. We'd respectfully request we continue to the
10 October 19th omni for status only.

11 THE COURT: Okay. They'll be continued to the 19th.

12 MS. BERAN: Thank you, your Honor. Your Honor, as it
13 relates to the liquidating -- Items Number 26 and 27, the
14 liquidating trust's sixth omnibus objection, as well as the
15 liquidating trust's seventh omnibus objection, in connection
16 with those two omnibus objections, we continue to have
17 discussions with parties who filed responses, as well as those
18 who we are in contact. And we'd respectfully request for those
19 listed on Exhibit B that those two omnibus objections be
20 adjourned for status hearing till the October 19th omni.

21 THE COURT: They'll be adjourned to the 19th of
22 October.

23 MS. BERAN: Your Honor, on Item Number 28, it's the
24 liquidating trust's eighth omnibus objections. As indicated on
25 Exhibit B, certain of those have been resolved, as well as then

1 there's the two categories of claimants. We'd respectfully
2 request that those be continued for status hearing to the
3 October 19th omnibus date.

4 THE COURT: They'll be continued to the 19th.

5 MS. BERAN: Similarly, Your Honor, Item Number 29 is
6 the liquidating trust's ninth omnibus objection. As indicated
7 on Exhibit B, some of those items have been resolved.
8 Similarly, there are the two categories of claimants that we
9 continue to work with. So, we'd respectfully request that the
10 matter be continued for status purposes to the October 19th
11 omnibus.

12 THE COURT: It'll be continued.

13 MS. BERAN: Thank you, Your Honor. Your Honor, as it
14 relates to the liquidating trust's tenth omnibus objection, as
15 indicated on Exhibit B, there are only two claimants that
16 remain subject to that omnibus objection. And we'd
17 respectfully request as it relates to that, that the status be
18 adjourned until September 21. However, in the meantime, Your
19 Honor, I did just want to notify the Court, as well as all
20 parties in interest, that the trust intends to set that down
21 for a substantive hearing on October 19th at two o'clock.

22 THE COURT: All right. Very good. So, that'll be
23 continued then to the 21st for status and then set for
24 substantive hearing on the 19th. Are you going to give
25 specific notice of the substantive hearing?

1 MS. BERAN: Yes, Your Honor. We do intend to send
2 out our standard notice of substantive hearing that we've done
3 in other instances in this case.

4 THE COURT: Okay. That's the Court's preference.

5 MS. BERAN: Your Honor, as it relates to the -- Item
6 Number 31, the liquidating trust's eleventh omnibus objections
7 -- objection, in connection with that, Your Honor, we'd
8 respectfully request that this matter be continued for status
9 until the October 19th omni. However, Your Honor, we would
10 like today to establish an additional briefing schedule.

11 In connection with items or claims related to this
12 omnibus objection, at least one of the claimants believes that
13 the recent Fourth Circuit case, in the LandAmerica case, is
14 dispositive. The trust respectfully disagrees but nonetheless
15 has agreed with that movant that there could be additional
16 briefing to address that issue.

17 In connection with that, we have agreed with that
18 movant, as well as anybody else who would like to file an
19 additional brief in support of their claim, that briefs would
20 be due from the movants or claimants on or before October 10th,
21 and thereafter, that the trust would have three weeks to file a
22 reply. And the trust's response would be due on or before
23 October 31st with the concept that the matter would be argued
24 from a legal perspective and/or to the extent evidence is
25 necessary to support or refute the claim, that would take place

1 at the November hearing which is November 21.

2 THE COURT: All right. Now, let me ask, are -- you
3 say the claimants file their briefs. Are the claimants
4 represented by counsel in this case?

5 MS. BERAN: Your Honor, there is one claimant who is
6 represented by counsel who we were having discussions with. I
7 believe a couple of the other claimants, who have not requested
8 this briefing schedule, are also represented by counsel. And
9 then, there are several that are pro se.

10 THE COURT: Okay. Because what happened in the Land
11 America case, of course, when we tried that there was nobody
12 present on -- just like, you know, the chairs were empty on the
13 left hand side of the courtroom because none of the claimants
14 were represented individually by counsel. And they were
15 scheduled around the country much like I suspect they are here,
16 and, of course, couldn't be here for the hearing and such. I
17 just was wondering if they're more organized in this case or
18 just how we're going to really have this go forward.

19 MS. BERAN: Your Honor, there was one claimant that
20 had a -- is represented by counsel who is very active in the
21 trust. The attorney handling that matter is in constant
22 communications with him so I do believe there will be somebody
23 sitting -- a lawyer sitting at that table to the extent the
24 matter's not otherwise resolved in between now and the November
25 omnibus date.

1 THE COURT: All right. And you say the issues here
2 are similar to those that were resolved by the Fourth Circuit
3 or are there different issues that we're going to have to take
4 up?

5 MS. BERAN: Your Honor, standing before you, I can't
6 give you the specific similarities and/or differences. It does
7 relate to the special case retention program that -- and
8 eligibility related to the same and the status on which, if you
9 were entitled and qualified, of which the same would be,
10 whether it be administrative priority and/or general unsecured.
11 And standing here before Your Honor today, that is the extent
12 of the specificity or lack thereof that I know.

13 THE COURT: All right. Very good. Now, if a
14 claimant is not represented by counsel, as you said there were
15 a number of those with regard to this eleventh omnibus
16 objection, what requirement or what happens to them if they
17 don't file a brief? I mean, they won't know how to file a
18 brief, if we establish a briefing schedule. I mean, are we
19 going to make this mandatory or are we going to make it
20 voluntary or just if they want to file a brief, they can. If
21 they, you know -- I'm just wondering how we're going deal with
22 those claims.

23 MS. BERAN: From the trust's perspective, it was --
24 we envisioned it to be completely voluntary. We were doing
25 this as an accommodation to -- and it's Mr. Loveall who has --

1 does have counsel. He had indicated that he would like to do a
2 subsequent briefing. And we indicated that that was not an
3 issue with us. We would just like an opportunity to reply to
4 any such briefing. And that's where we came up with this
5 proposed briefing schedule is in discussions with his counsel.

6 So, we would envision that to the extent -- it's
7 completely voluntary from a briefings perspective. And
8 responses have already been filed and so to the extent a
9 response was filed and no additional briefing as they have met
10 their burden as it relates to filing a response. And we
11 wouldn't seek to have any type of default on the parties, that
12 we would come before Your Honor and argue based on the papers
13 that had been filed.

14 THE COURT: All right. Very good. And, you know,
15 how is it going to be communicated to these claimants that they
16 have the opportunity to file a subsequent brief if they want to
17 do so?

18 MS. BERAN: Your Honor, what we had envisioned,
19 subject to of course Your Honor's instructions, is that there
20 would be an order entered in connection with this eleventh
21 omnibus. And that order would then specifically be tendered on
22 all the remaining parties as identified on Exhibit B in
23 connection with the eleventh omnibus objection.

24 THE COURT: All right. And in that, it would tell
25 them that they're entitled to file a brief if they want but

1 they're not required to by such and such a date, that you're
2 going to respond by such and such a date to any briefs that are
3 so filed and then we'll have a substantive hearing on the 21st
4 of November at which they need to be present to, you know, or
5 have counsel present to represent their interests.

6 MS. BERAN: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. BERAN: And we will -- we would be tendering that
9 order to Your Honor for entry.

10 THE COURT: All right, very good. I'll be looking
11 for that then, thank you.

12 MS. BERAN: Thank you, Your Honor. Your Honor, on
13 Item Number 32 which is the liquidating trust's twelfth omnibus
14 objection, the objection as it relates to the claim of Curtis
15 Etheridge will be withdrawn. The remaining claim of Kenneth
16 Duda, we'd respectfully request that -- or we're notifying that
17 we will be filing a notice of substantive hearing for the
18 October 19th omnibus date --

19 THE COURT: All right. Very good.

20 MS. BERAN: -- for Mr. Dudas (sic). In connection
21 with Item Number 33, the liquidating trust's thirteenth omnibus
22 objection, the objection as it relates to the claim of Antone
23 Botelho and Patrick Longood have been resolved. As it relates
24 to the remaining claimants identified on Exhibit B, we'd
25 respectfully request that there be a substantive hearing for

1 October 19th for the claim of Andrew Grosse and then there be a
2 status hearing on October 19th for the claim of Mr. Bruce
3 Besanko.

4 THE COURT: All right. And you're going to send out
5 a notice to Mr. Grosse or his counsel with regard to the
6 substantive hearing.

7 MS. BERAN: Absolutely, Your Honor. Any of the ones
8 in which we're sitting down for a substantive hearing, we will
9 send out the notice that we've done in other instances.

10 THE COURT: Thank you.

11 MS. BERAN: Item Number 34, Your Honor, is the
12 liquidating trust's fourteenth omnibus objection. In
13 connection with that objection, Your Honor, as identified on
14 Exhibit B, certain of the claims have been resolved. And then,
15 there are the two categories in which we have responses
16 received and/or we are working with the claimants in trying to
17 reconcile and/or otherwise resolve. Based on the same, Your
18 Honor, we'd respectfully request that we continue for status
19 purposes until the October 19th omnibus date.

20 THE COURT: It'll be continued to the 19th.

21 MS. BERAN: Thank you, Your Honor. Item Number 15 is
22 a similar situation where certain of the items as identified on
23 Exhibit B have been resolved. The second category of the two
24 categories of either a response was filed and we're working
25 with or we're otherwise working with and have agreed to

1 continue the response deadline. We'd respectfully request as
2 identified on Exhibit B that those items be continued until the
3 October 19th omnibus date.

4 THE COURT: And they'll be continued to the 19th.

5 MS. BERAN: Thank you, Your Honor. The good news,
6 Your Honor, you -- I think as you will see as we go from 35 to
7 36 is Omni 16 has been completely closed out. So, we skip over
8 to the liquidating trust's seventeenth omnibus objection.

9 THE COURT: By closed out, you mean you've resolved
10 all of those claims.

11 MS. BERAN: Correct, Your Honor.

12 THE COURT: That's wonderful. Keep up the good work.

13 MS. BERAN: Thank you, Your Honor. As it relates to
14 the liquidating trust's seventeenth omnibus objection, the
15 trust has resolved several of the claims on that objection as
16 identified on Exhibit B. In addition, Your Honor, I would note
17 for the record, and the order that we will tender in connection
18 with this omnibus will provide for the same, but I was supposed
19 to indicate this on the record, that the Voit Partners Limited
20 One Trust Number 5, which addresses Claim Number 15176, the
21 parties have agreed to resolve this objection as it relates to
22 that claim subject to procedures approved -- previously
23 approved by Your Honor on the terms as follows.

24 Claim 15176 will be allowed as a general unsecured
25 claim in the amount of \$1.00. The -- Voit shall have the right

1 to file an amended claim in the event of a payment default by
2 Carmax, and the liquidating trust shall have the right to
3 object to any such amended claim on the grounds that the
4 existence of a default or the amounts of damages has not been
5 adequately demonstrated.

6 And then, Your Honor, similarly, the liquidating
7 trust will establish a reserve in the amount of Voit's pro rata
8 share of any distributions made by the liquidating trust to
9 general unsecured creditors based on Voit having a disputed
10 general unsecured claim in the amount of \$500,000. And so,
11 that \$500,000 will be the reserve amount.

12 The liquidating trust will hold the reserve amount
13 until the date that the liquidating trust makes final
14 distributions to general unsecured creditors. If there has
15 been no payment default by Carmax under the lease buy-in
16 between CC Investors, 1996-2, as lessor, and Circuit City
17 Stores, Inc. as tenant, that is uncured as of the date of the
18 final distribution to general unsecured creditors, the
19 liquidating trust may distribute the reserve amount in full.

20 And then, the reserve amount shall be Voit's sole
21 source of recovery on any amended claim. And the order that we
22 tend will so provide that. But, it will just be in connection
23 with this omnibus objection.

24 THE COURT: Okay. So, help me on this just a little
25 bit so I understand. The claim is going to be reduced to \$1.00

1 --

2 MS. BERAN: Correct.

3 THE COURT: -- but subject to filing an amended
4 claim.

5 MS. BERAN: Correct.

6 THE COURT: The amended claim only gets filed if the
7 third party defaults.

8 MS. BERAN: Correct.

9 THE COURT: Okay.

10 MS. BERAN: If Carmax defaults under the terms of the
11 lease, correct.

12 THE COURT: Right, okay. And without getting into
13 all the legalities about why all that's going to occur, what's
14 -- if there's an amended claim filed, the maximum that the
15 amended claim can be is \$500,000?

16 MS. BERAN: Correct, Your Honor.

17 THE COURT: Okay. And there's going to be a reserve
18 that's going to be established that if there was some sort of a
19 default, that it could be paid out -- the claim could be paid
20 out of that reserve.

21 MS. BERAN: Correct, Your Honor.

22 THE COURT: So now, is this an administrative claim
23 then, that's being paid in full? Or is it a priority claim or
24 is this the agreed amount of a much larger claim that is agreed
25 that these are the dollars that are to be paid?

1 MS. BERAN: Your Honor, it would be a general
2 unsecured claim and the reserve amount is just to reserve so
3 that to the extent there are any distributions to general
4 unsecured creditors -- but that the ultimate claim amount would
5 be capped at the half million and the reserve amount but no
6 greater than that and it would be to the same distribution that
7 general unsecured creditors are receiving.

8 THE COURT: So, if the ultimate claim that's brought
9 against the trust is \$500,000 and creditors are getting a
10 percentage of their claims, then it's only going to be a
11 percentage of the 500,000 --

12 MS. BERAN: Correct, Your Honor.

13 THE COURT: -- that would actually be paid.

14 MS. BERAN: Correct, Your Honor.

15 THE COURT: I understand. Thank you. All right.

16 MS. BERAN: Okay? In addition, Your Honor, as it
17 relates to Omni 17, a couple -- there were -- there was a
18 typographical error on the Exhibit B where -- on Page 105. The
19 -- Surf Sand's Limited Partnership, as Your Honor will see, it
20 says liquidating trust's omnibus objection Number 2, that
21 should be 17. It was a cut and paste error on my part.

22 And then, Your Honor, as it relates to Item Number
23 17, Crown CCI, LLC, the claim number, there should be another
24 claim in that, as well. And that claim should be 7631 and we
25 will add that to Exhibit B so that the same will be a proper --

1 for the next omnibus objection hearing.

2 THE COURT: All right. Very good.

3 MS. BERAN: Also, Your Honor, the trust has agreed to
4 withdraw its objection to the -- and I apologize. I should
5 have said this when we back on Omni 14 but I also believe it's
6 already on Exhibit B. But, the trust has agreed to withdraw
7 its objection to the CBR Richard Ellis Claim Number 3490
8 currently pending or subject to liquidating trust fourteen
9 omnibus objection to claims.

10 THE COURT: All right.

11 MS. BERAN: With those statements on the record, Your
12 Honor, as it relates to the seventeenth omnibus objection,
13 there were additional resolutions to certain of the claims as
14 identified on Exhibit B. In addition, there are the two
15 categories, specifically the ones that have filed responses
16 that we're working with and/or those who have not filed
17 responses but who we've agreed to extend the response deadline.
18 We'd respectfully request that those two categories of
19 claimants, the status conference be continued until the October
20 19th.

21 THE COURT: They'll be continued to the 19th.

22 MS. BERAN: Thank you, Your Honor. Item Number 37 is
23 the liquidating trust's eighteenth omnibus objection to claims.
24 In connection with that, Your Honor, we'd respectfully request
25 that this status hearing be continued as it relates to all of

1 the claims until the October 19th omnibus date.

2 THE COURT: They'll all be continued.

3 MS. BERAN: Thank you, Your Honor. Item Number 38,
4 the liquidating trust's nineteenth omnibus objection. Your
5 Honor, as it relates to that objection, the trust will be
6 withdrawing the objection as it relates to the claim of -- and
7 I apologize if I mispronounce names here -- but, as it relates
8 to Mr. David Cacciotti, Mr. Kenneth Giaccone, and Mr. Richard
9 Miller.

10 As it relates to the remaining claimants that are the
11 -- still pending in connection with that omnibus objection,
12 we'd respectfully request that this status hearing be adjourned
13 to October 19th with respect to the claim of Mr. Brian
14 LaCoursiere. And then, would also just inform the Court and we
15 will send out the requisite hearing notice, that a substantive
16 hearing will be held on October 19th for the claims of Auvill
17 Browne, Robyn Davis, Brandi Fose, Melissa Gillard, Patrick
18 Kennedy and Mr. Jeff McDonald.

19 And then, similarly, a substantive hearing will be
20 held on November 21st for the claim of Ms. Anne Thumann.

21 THE COURT: All right. Those will be set as you've
22 just outlined.

23 MS. BERAN: Yes, Your Honor. Thank you. The Item
24 Number 39 is the liquidating trust's twentieth omnibus
25 objection. As it relates to that omnibus objection, the trust

1 has resolved the objection as it relates to the claims as
2 identified on Exhibit B. And there are similarly the two
3 categories of claimants that we would respectfully request that
4 this matter be continued for status hearing until the October
5 19th omnibus date.

6 THE COURT: It'll be continued to the 19th of
7 October.

8 MS. BERAN: Thank you, Your Honor. Similarly, the
9 Item Number 40 is the liquidating trust's thirty -- excuse me
10 -- twenty-first omnibus objection to claims. Certain of those
11 claims have been resolved as indicated on Exhibit B and Exhibit
12 B also indicates the two categories of claimants who which we
13 continue to work with and we'd respectfully request that those
14 matters be continued until the October 19th omnibus for status
15 purposes.

16 THE COURT: They'll be continued.

17 MS. BERAN: Thank you, Your Honor. Item Number 41 is
18 the liquidating trust's twenty-second omnibus objection. There
19 was one claimant that the objection is still pending as it
20 relates to his claim. We would request and of course we'll
21 send out the notice that the matter be set for substantive
22 hearing on September 21. And one of the bases that we will be
23 seeking relief is that no timely response was filed as it
24 relates to that one claimant.

25 THE COURT: All right.

1 MS. BERAN: Item Number 42, Your Honor, is the --

2 THE COURT: That suggests a response was filed. It
3 just was not timely.

4 MS. BERAN: No, Your Honor. There was no response
5 filed --

6 THE COURT: Okay, very good.

7 MS. BERAN: -- to date in connection with that one.
8 Your Honor, that ends the omnibus objections. There is still
9 one remaining objection and that was the -- one of the
10 stand-alone objections as it relates to the claim of Mr.
11 Michael Beam. Mr. Beam has filed a response and -- based on
12 the same. He could not be here today. We agreed that we would
13 set this matter out for substantive hearing. We indicated
14 there would substantive hearing. And we will be noticing and
15 doing filing of the formal notice of substantive hearing for
16 the October 19th omnibus.

17 THE COURT: All right. That'll go forward as a
18 substantive hearing.

19 MS. BERAN: Thank you, Your Honor. Your Honor, that
20 brings us to the last part of the items on the agenda and those
21 are the default judgments.

22 Specifically, the first one is a default judgment or
23 a motion for default judgment in the adversary proceeding of
24 Siegel versus Rawlings Sporting Goods Company. In connection
25 with that matter, Your Honor, the complaint was filed on

1 November 9th. The summons was issued by the clerk's office on
2 November 10th. The summons was served as it relates to the
3 complaint as well as the procedures order pursuant to Your
4 Honor's previously entered order on December 7th. A
5 certificate of service indicating service was filed with the
6 Court on February 25th.

7 The complaint seeks a sum certain of \$23,353.
8 Attached to the request for entry of default was the affidavit
9 of my law partner, Ms. Lynn Tavenner, who outlined all of the
10 above referenced facts. In connection with that, Your Honor,
11 the motion for default was served, as indicated on the
12 certificate of service. To date, there has been no response to
13 the motion for default judgment nor has there been any answer
14 to the complaint.

15 The clerk has already entered default against
16 Rawlings Sporting Goods and we'd respectfully request that a
17 judgment by default be entered against the defendant for the
18 amount articulated in the motion and as well as in the
19 complaint.

20 THE COURT: All right. Very good. The Court has
21 reviewed the pleadings in this matter. The Court finds that
22 there was due and proper service of a process effected on the
23 defendant, Rawlings Sporting Goods Company. And the Court
24 finds that the time within which the debtor had to respond to
25 the complaint has expired and no response has been filed to

1 date.

2 The Court notes that the return of service is proper
3 in this case, that the motion for default was duly filed, that
4 the clerk has entered the default on the record. The Court
5 notes from the affidavit filed in this case by Ms. Tavenner
6 that the amount sought is a liquidating sum to which she has
7 verified and therefore the trust is entitled to a judgment by
8 default in this case in the amount of \$23,353. And the Court
9 will so order.

10 MS. BERAN: Thank you, Your Honor. Your Honor, the
11 next one is similar. It's a motion for default judgment. It's
12 in the adversary proceeding of Siegel versus UmeDisc, Ltd. In
13 connection with that matter, the complaint was filed on
14 November 9th. The summons was issued by the clerk on the exact
15 same day, on November 9th. The complaint, as well as the
16 summons, as well as the procedures order pursuant to Your
17 Honor's procedures order's instructions was served on the
18 defendant on December 10th.

19 Similarly, Your Honor, the complaint does seek a sum
20 certain of the amount of \$3,039,263.90. Similarly, Your Honor,
21 the complaint also indicates that the proof of claim filed by
22 that defendant was over stated by the amount of \$1,045,996.82.

23 Attached to the request for entry of default was the
24 affidavit of Martin Krolewski of the Kelley Drye law firm.
25 Your Honor, as it indicates in Mr. Krolewski's affidavit, there

1 was some initial discussions with a law firm who ultimately
2 corresponded with Mr. Krolewski who -- to indicate that they
3 had not been formally retained and that they would not be
4 handling that matter. And that corresponded is attached to Mr.
5 Krolewski's affidavit.

6 Similarly, Your Honor, given the amount at issue, a
7 follow-up letter was sent and no response was received. The
8 clerk has entered default against this defendant. The motion
9 for default judgment was served. To date, there has been no
10 response to the motion for default judgment nor has there been
11 an answer to the complaint.

12 Based on the same, Your Honor, as well as the facts
13 represented in Mr. Krolewski's affidavit, we'd respectfully
14 request that the default judgment be entered against the
15 defendant.

16 THE COURT: All right. The Court has reviewed the
17 pleadings in this matter, as well. The Court finds that the
18 process was duly served on the defendant and that no response
19 has been filed timely to the complaint. The Court finds that
20 the debtor therefore -- I mean, the defendant is therefore in
21 default. The Court notes that the clerk has entered the
22 default of record in this case.

23 The Court notes that the amount sought is liquidated.
24 The Court therefore will enter default judgment in favor of the
25 trust in the amount of \$3,039,263.90 and the Court will also

1 reduce the defendant's claim number, 4608, from the overstated
2 amount of \$1,319,501.66 to the amount of \$273,504.84.

3 MS. BERAN: Thank you.

4 THE COURT: The Court will enter an order to that
5 effect.

6 MS. BERAN: Your Honor, similarly, there was a count
7 in the complaint as it relates to 502(d). In the order that we
8 would like to tender, we'd address the same.

9 THE COURT: Of course. 502(d) would be -- certainly
10 be applicable in this case.

11 MS. BERAN: Thank you, Your Honor. Your Honor, that
12 brings us to the end of the items on the docket. However, Mr.
13 Caine would like to provide the Court with a status of the
14 matters that continue to be ongoing, and specifically as it
15 relates to the claims resolution reconciliation objection
16 process, as well as the numerous adversary proceedings that are
17 still pending before Your Honor.

18 THE COURT: That would be welcome, thank you. Mr.
19 Caine?

20 MR. CAINE: Thank you, Your Honor. I must note on a
21 light note I'm admiring your bobblehead.

22 (Laughter)

23 THE COURT: Well, the deal was -- that was from my
24 former law clerk who was here last time and he was a Cleveland
25 Indians fan. And I gave him unmitigated grief over that. And,

1 of course, when my Dodgers went into bankruptcy, the favor was
2 returned. And so, that was his parting gift to me as he left
3 with the caveat that it had to remain on the bench for at least
4 one week.

5 (Laughter)

6 THE COURT: So, that is the story.

7 MR. CAINE: That's a good story. Any bobblehead is a
8 good bobblehead. It should be a Dodger bobblehead at some
9 point, but --

10 THE COURT: Well, yes, we'll see if my colleague and
11 good friend, Kevin Gross, does well by them. I've offered to
12 substitute in as the third base coach if he needs help, but
13 we'll see.

14 MR. CAINE: Thank you for the opportunity to give an
15 update. With respect to the adversary proceedings where the
16 numbers are much more manageable than with respect to claims,
17 we filed approximately 565 to begin with. Right now, there are
18 approximately 400 that are resolved. And I say approximately
19 because the attorneys provide status reports to me on a monthly
20 basis. And so, these numbers are a couple of weeks old.

21 So, 400 of the 565 have been resolved either through
22 settlement, dismissal where we subsequently determined the
23 defendants had a very good defense and we weren't going to
24 prosecute them, or default judgment. There are approximately
25 15 that have been mediated that aren't settled and I believe if

1 not all of those as of today, Your Honor has set those for
2 trial. And then, there are approximately 150 that remain to be
3 mediated.

4 So, we've come quite far in resolving those 565 in
5 the course of approximately ten months, approximately ten
6 months. The task of remaining to mediate those in the
7 remaining 60 days that are left is a daunting one. And I
8 mentioned to Your Honor that we may come to you and ask you for
9 a little more time to mediate those because there are so many
10 things that are going on that the trust staff has to attend to,
11 some of which you saw as you went through the agenda and you
12 noticed that of the 22 omnibus plus stand-alone objections that
13 the trust filed, almost exclusively with respect to
14 administrative claims, we are attempting to resolve those but
15 these things take some time. The objection is the beginning of
16 the process rather than the end.

17 With respect to claims, we have currently a deadline
18 to object to all but administrative claims towards the end of
19 October. And we will be filing a motion, Your Honor, asking
20 for a further extension of that. And within that motion, we
21 will provide a lot of the detail with respect to what's out
22 there but I thought because it won't take more than a couple of
23 moments, I could give you a sense of that.

24 In terms of the count of the number of claims, and
25 there were approximately -- there were over 13,000 claims filed

1 in this case -- 1,070 have been allowed so far. And of those,
2 there are approximately 800 that were, what I'll call, 100
3 percent claims, administrative, secured or priority, that have
4 actually been paid. And that adds up to about \$110 million
5 that we've already paid. Those claims as filed were 270
6 million. So, we knocked them down to 110 million and we paid
7 them.

8 We have expunged 7,750. And those expunged claims
9 add up to \$8.6 billion. Of course, many of those are
10 duplicates but it's a fun number to say. And then, those that
11 are pending --

12 THE COURT: We always went for the low hanging fruit
13 first, yes?

14 (Laughter)

15 MR. CAINE: Exactly. Exactly. Those that are
16 pending is 5,939 and that would include claims that we've
17 objected to but haven't been resolved yet, as well as claims
18 that we have not yet objected to. And of that amount, there
19 are 3,868 that we need to decide whether we're objecting to
20 those or not. So, basically, we have a couple of months at
21 this point to try and get objections on to those 3,868 and they
22 add up in claim face dollars of \$920 million.

23 Now, there are two categories that make up the vast
24 majority of the count of the number of claims. But, the claims
25 themselves are small and that is HR claims, human resources

1 claims, and expense vendor claims. Those two alone add up to
2 approximately 3,000 of the 3,868. But, of the 920 million in
3 dollars, they're 220 million.

4 What we are planning to do and believe that we can
5 accomplish is to object to all of the landlord unsecured claims
6 that remain, all of the tax unsecured claims that remain and
7 the majority of the expense claims that remain. The HR claims
8 alone are 1400 claims, approximately, and that is a very
9 time-consuming process of trying to determine the entitlement
10 to a lot of those claims.

11 So, while we will be coming to Your Honor asking for
12 some more time, we're not doing that in the sense of we breathe
13 a sigh of relief and we can push everything off. We still are
14 endeavoring and believe that we can object to the unsecured
15 claims for landlords and tax and a majority of the expense
16 vendors before the current deadline. But, we need the extra
17 time simply because the volume is too great and to make sure we
18 don't miss anything.

19 So, it's just a little bit of a heads up. I can't
20 speak enough of the efforts of Mr. McDonald and the rest of the
21 trust's staff. They work extremely hard. I told them to stop
22 e-mailing me on the weekends, but they're very dedicated
23 people. And with the trials that are coming up, the mediations
24 that are required, and the claims resolutions in addition to
25 tax returns that need to be filed and the like, there's so much

1 left to be done. I feel like we've made great progress but
2 it's some gargantuan task.

3 THE COURT: All right. Thank you very much for that
4 update. That really is quite helpful from, you know, my
5 standpoint to get that periodically from you just to know where
6 we are in the whole scheme of things.

7 MR. CAINE: You're welcome.

8 THE COURT: Ms. Beran, is there any other business we
9 need to take up then today in Circuit City?

10 MS. BERAN: Your Honor, that's all from the trust's
11 perspective. To the extent Your Honor has any additional
12 questions, Mr. Caine and/or I are happy to endeavor to answer.

13 THE COURT: All right. Well, thank you very much.
14 As usual, you've been very thorough. And we'll see you back
15 here on the 7th.

16 MS. BERAN: Thanks, Your Honor.

17 COURTROOM DEPUTY: All rise. Court is now adjourned.

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C E R T I F I C A T I O N

I, STEPHANIE SCHMITTER, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.

/s/ Stephanie Schmitter

STEPHANIE SCHMITTER

J&J COURT TRANSCRIBERS, INC. DATE: September 1, 2011